

November 19, 2001

DRAFT

PERMANENT CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") made this ____ day of _____, 200_ by and between _____, ("Grantor") and _____ (Grantee).

The designation Grantor and Grantee as used herein shall include said parties, their successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

RECITALS

WHEREAS, Grantor owns in fee simple certain real property situated, lying and being in _____ County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein ("Property");

WHEREAS, Grantee is [either a public body of this state, an agency of the United States, or a nonprofit corporation or trust whose purpose is the conservation of property], and is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35;

WHEREAS, Grantor and Grantee recognize the conservation, scenic, natural, or aesthetic value of the property in its natural state, which includes the following natural communities: [describe by wetland and/or stream type, as well as any associated buffers or upland communities]. The purpose of this Conservation Easement is to maintain wetland and/or riparian resources and other natural values of the Property, and prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition.

WHEREAS, the preservation of the Property is a condition of Department of the Army permit Action ID _____ issued by the Wilmington District Corps of Engineers, required to mitigate for unavoidable stream and/or wetland impacts authorized by that permit, and certified by a 401 Water Quality Certification issued by the North Carolina Division of Water Quality. Grantor and Holder agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Wilmington District and the North Carolina Division of Water Quality (Third-Parties, to include any successor agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under said permit and certification.

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Grantor hereby

unconditionally and irrevocably grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property described on Exhibit A, together with the right to preserve and protect the conservation values thereof, as follows:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This conservation Easement is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's successors and assigns, lessees, agents and licensees.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purpose of this Conservation Easement is prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.

B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line pier landing, dock or any other temporary or permanent structure or facility on or above the Property.

C. Industrial, Commercial and Residential Use. Industrial and/or commercial activities, including any right of passage used in conjunction with commercial or industrial activity, are prohibited on the property. Residential use of the Property is prohibited.

D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, and horticultural use of the Property is prohibited.

E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the Property.

F. Signage. No signs shall be permitted on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property, signs giving directions or proscribing rules and regulations for the use of the Property

and/or signs identifying the Grantor as owner of the property and Grantee as the holder of Conservation Easement on the Property.

G. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property is prohibited.

H. Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Property, except to restore natural topography or drainage patterns.

I. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

J. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

K. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt-bikes, all-terrain vehicles, cars and trucks is prohibited.

ARTICLE III GRANTOR'S RESEVERED RIGHTS

The Grantor expressly reserves for himself, his personal representatives, heirs, successors or assigns, the right to continue the use of the property for all purposes not inconsistent with this Conservation Easement, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress, the right to hunt, fish, and hike on the Property, the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement.

ARTICLE IV. GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors and assigns, and Third-Parties, shall have the right to enter the Property at all reasonable times for the purpose of inspecting said property to determine if the Grantor, or his personal representatives, heirs,

successors, or assigns, is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee shall also have the right to enter and go upon the Property for purposes of making scientific or educational observations and studies, and taking samples. The easement rights granted herein do not include public access rights.

ARTICLE V ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Conservation Easement by the Grantor, its agents, successors, or assigns, which comes to the attention of the Grantee, the Grantee or Third-Parties may institute a suit to enjoin such violation and if necessary, to require the restoration of the Property to its prior condition at the Grantor's expense.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Grantor's lessees or invitees; or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

ARTICLE VI MISCELLANEOUS

A. Title. The Grantor warrants, covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to make, declare and impose the aforesaid Conservation Easement; the Property is free and clear of any and all encumbrances, except the following described easements leases, restrictions, and rights of way of record: [describe title exceptions by type of instrument and deed book and page], and that Grantor will warrant and defend title to the same against the claims of all persons.

B. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Property. The Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger or the fee and easement interests in the Property or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the Third-Parties.

C. Assignment. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq., and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

D. Entire Agreement and Severability. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.